IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1171 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes : YES

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

3 to 5 No

GUJARAT STEEEL TUBE CO.LTD.

Versus

VIRCHANDBHAI BHOGILAL SHAH

Appearance:

MR AK CLERK for Petitioner

MR UNMESH D SHUKLA for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 20/08/1999

C.A.V. JUDGEMENT

1. The only controversy emerges in the matter :

Whether the arrears of rent due to the landlords would come within the sweep of Sec. 22(1) of the Sick Industrial Companies (Special Provisions)

Act, 1985 or not?

2. Few facts of the matter are - the present respondents being landlords filed a Civil Suit in the Small Causes Court at Ahmedabad being HRP Suit No. 875 of 1997 for the eviction of rented premises against the present applicant which is a Company incorporated under the Indian Companies Act. In the above suit, the plaintiffs i.e. present opponents filed an Application at Exh. 37 under Sec. 11(4) of the Bombay Rent Act for directing the tenant - present applicant to deposit the amount of the arrears of rent from 1st April, 1997 upto the date it had fallen due, amounting to Rs. 1,01,250/and that directing the tenant to deposit Rs. 6,750/- regularly in each month for use and occupation of the rented premises. This application was vehemently opposed by the present applicant - original defendant on the ground that the defendant was a company and as a sick unit had filed a Reference to the BIFR under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. The said Reference was registered as Case No. 99 of 1997 and BIFR proposed to make an enquiry under Sec. 16 of the said Act. It was also the contention of the defendant that according to Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, no suit for the recovery of money can be filed or proceeded with against the present defendant. The Trial Court upheld the contention of the defendant and held that a Reference to the BIFR was made and enquiry was contemplated and, therefore, Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 was attracted, which creates bar against the recovery of money of the arrears of rent also and, therefore, the court below dismissed the application of the landlords.

3. Being aggrieved, the plaintiffs - present opponents filed a Revision Application being Civil Revision Application No. 15 of 1999 before the Appellate Bench of the Small Causes Court at Ahmedabad. While setting aside the reasoning of the Small Causes Court, Ahmedabad, the Appellate Bench of the Small Causes Court came to believe after relying on the decision of the Hon'ble Supreme Court in the matter of SHREE CHAMUNDI MOPEDS LIMITED vs. CHURCH OF SOUTH INDIA TRUST ASSOCIATION, MADRAS, reported in AIR 1992 SC 1439 that the proceeding of eviction instituted by the landlord

against the tenant is not covered under Sec. 22(1) of the Act. Further, the Appellate Bench of the Small Causes Court while replying the argument on behalf of the then opponent - the present applicant in respect of the Amendment in 1994 in Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, that the wording "no suit for the recovery of money" go with the latter part of the amendment and relates only to the liability arising out of the enforcement of any security against the industrial company. Ultimately, the Appellate Bench of the Small Causes Court at Ahmedabad held that the present recovery of arrears of rent would not be barred under Sec. 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and hence the Appellate Bench allowed the Application at Exh. 37. Since there was no evidence to fix interim rent less than the agreed rent of Rs. 6,750/- the Appellate Bench held

that Rs. 6,750/- was the interim rent and directed the tenant to pay the arrears of Rs. 1,01,250/- and to deposit Rs. 6,750/- per month as interim rent in the Court.

4. Being aggrieved, this Revision Application is filed by the original defendants i.e. tenant company.

5. Learned counsel Mr. A.K. Clerk on behalf of the applicant and learned counsel Mr.U.D. Shukla who appears on Caveat on behalf of the landlords were heard at length.

6. Mr. Abilash Clerk put much stress on the wording "No suit for the recovery of money" employed in Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Mr. Clerk invited the attention of the Court on Exh. 37 and the relief asked for. Mr. Clerk contended from the relief asked for that the relief pertains only for the recovery of the money and the whole proceeding for recovery of money of whatever nature is required to be suspended against the sick unit as soon as the Reference is filed under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985. Mr. Clerk contended that the trial court has rightly held that the application was filed purely for the recovery of money and since the unit has filed a Reference under Sec.

15 of the Sick Industrial Companies (Special Provisions) Act, 1985, as per Sec. 22(1), this recovery is barred. Learned Counsel Mr. Clerk contended that the Appellate Bench of the Small Causes Court, however, has given very narrow meaning to the phrase "no suit for the recovery of money" employed in the Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Mr.Clerk contended that the widest possible meaning must be given to the phrase and attributing that meaning to the phrase, it clearly includes within its scope any proceeding for the recovery of money including the proceedings for the recovery of the arrears of rent. Mr.Clerk relied upon the decision of the Hon'ble Supreme Court in the case of REAL VALUE APPLIANCES LIMITED vs. CANARA BANK, reported in (1998) 5 SCC 554. Attention of the court is also drawn to para 23 of the decision and it is contended that as soon as the reference is filed, Section 22(1) comes into operation. However, in the revision application, this contention is not controverted by the other side and it is admitted that the Reference is filed and on filing of the Reference, Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 is attracted. Mr. Clerk also relied on the decision of the Apex Court in the matter of GRAM PANCHAYAT vs. SHREE VALLABH GLASS WORKS LTD., reported in AIR 1990 SC 1017, wherein the Apex Court has pronounced that it may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the Company for the recovery of their dues outstanding

overdues or arrears by whatever name it is called. Mr. Clerk contended that therefore any dues and whatever name it is called, are barred under Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Mr. Clerk also relied on the decision of the Supreme Court in the case of MAHARASHTRA TUBES LIMITED vs. STATE INDUSTRIAL & INVESTMENT CORPORATION OF MAHARASHTRA LTD., reported in 1993 (2) SCC 144 wherein the Supreme Court has given very wide meaning to words "proceedings" and "or the like". The Supreme Court has further observed in the decision that the expression `proceedings' in Sec. 22(1) must be widely construed. It cannot be confined to legal proceedings understood in the narrow sense of proceedings in a court of law or a legal tribunal for attachment of sale of the debtor's property, notwithstanding the use of that expression in the marginal code. Mr. Clark contended that if this recovery of money is allowed, the same will defeat the provision of Sec. 22(1) of the Sick Industrial Companies

(Special Provisions) Act, 1985 and that the liability to pay rent is not extinguished by operation of Sec. 22(1) of the said Act, but it is only time being suspended. Mr. Clerk further contended that the Appellate Bench of the Small Causes Court in para 14 of its judgment has given very narrow interpretation of the phrase "no suit for the recovery of money" to be construed as to be the suits relating in respect of the matters referred to in the latter part of the Section, which is against the spirit of the decision of the Apex Court in the case of

Maharashtra Tubes Ltd (Supra) and, therefore, Mr. Clerk argued that the matter be admitted and the interim relief argued that the matter be admitted and the interim relief be granted.

7. Learned Counsel Mr. U.D. Shukla on behalf of the Opponents has contended that the interpretation of the section by the Appellate Bench of the Small Causes Court is correct. Mr. Shukla has argued that the section is in two parts and the latter part which start with the phrase "No suit for the recovery of money". He further contended that no suit for the recovery of money qualifies the phrase for the enforcement of any security against the industrial company and qualifies the phrase of any guarantee in respect of any loans or advance granted to the industria company. He further argued that the landlord and tenant are bound by contract of tenancy between them and that contract is not suspended as per sub-sec (3) of Sec. 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. If the blanket meaning is given to the Sec. 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985, then, sub-sec. (3) shall become redundant and, therefore, the suit for the recovery of the arrears of rent would not be covered under Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Mr. Shukla relied on the decision of the Apex Court in the matter of DEPUTY COMMERCIAL TAX OFFICER vs. COROMANDEL PHARMACEUTICALS, reported in AIR 1997 SC 2027, wherein the Apex Court has held that the bar under Sec. 22(1) applies only to such

of those dues reckoned or included in sanctioned scheme for rehabilitation and in that case, the Sales Tax dues recovered by the sick company after the sanctioning of the scheme were held to be recoverable. Mr. Shukla also relied on the decision of the Hon'ble Supreme Court in the matter of SHREE CHAMUNDI MOPEDS LIMITED vs. CHURCH

OF SOUTH INDIA TRUST ASSOCIATION, reported in AIR 1992 SC 1439, wherein the Apex Court held that the eviction proceedings not covered under Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and that the leasehold right of a sick company cannot be regarded as property of the company for the purpose of sub-sec. (1) of Sec. 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

8. In the premises of the aforesaid contentions on behalf of the learned counsels for the parties, the crucial question arises whether recovery of the arrears of rent in a suit for eviction by landlord would be barred in view of Section 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

9. First we have to examine the status and the nature of the arrears which are sought to be recovered. Admittedly, relationship between the parties are of the landlord and tenant and the recovery which is sought is the arrears of rent. It may also be mentioned that this contractual relationships are restricted and protected by various rent legislations. Rent legislations have protected the interest of tenant

against eviction, at the same time, what is guaranteed to the landlord is the due compensation for the use and occupation of the premises. While interpreting any statute with reference to the relation of the landlord and tenant, this prime object is required to be kept in mind. Therefore, what is sought to be recovered is the compensation for the use and occupation of the premises which is let out to the present applicant. Incidentally, the present applicant happens to be a company incorporated under the Indian Companies Act and a legal person which gone sick and had asked protection under Sick Industrial Companies (Special Provisions) Act, 1985. If the applicant is not a legal person and a company, the question which has arisen would not have arisen at all.

10. Now, Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 reads as under :

> "22(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an

> industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1) of 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

11. The wordings "no suit for the recovery of money ..... to the industrial company" are added in the Section by way of an amendment in the year 1994 by Act 12 of 1994 by virtue of Section 12 of that Act.

12. The purpose and the object behind such provision is to ensure that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the Board or the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board or the Appellate Authority. These provisions are made with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. Therefore, these provisions are made to save assets and the property of the sick company and to render assistance and help till Board and/or Appellate Authority finalise the proceedings.

13. The Hon'ble Apex Court in the matter of Shree Chamundi Mopeds Ltd., (supra) has specifically observed that the leasehold interest of a company in question which is in occupation of the premises as a statutory tenant by virtue of protection conferred by Karnataka Rent Control Act cannot be regarded as property of the company for the purpose of sub-sec. (1) of Sec. 22 of the Act and for that reason also the provisions of Sec. 22(1) were not attracted to the eviction proceedings. Now according to the Apex Court, the leasehold interest of the company is not a property of the company. When this decision was pronounced by the Apex Court, the above mentioned amendment in Sec.22(1) was not there. Apex Court observed there that following proceedings were automatically suspended under Sec. 22(1) of the Act. These categories are :-

(i) Proceedings for winding up of the industrial company.

(ii) Proceedings for execution, distress or the like against the properties of the sick industrial company, and

(iii) Proceedings for the appointment of Receiver.

Apex Court then observed as under in para-12 of the judgment :-

"Eviction proceedings initiated by a landlord against a tenant company would not fall in categories (1) and (3) referred to above. The question is whether they fall in category (2). It has been urged by the learned counsel for the appellant company that such proceedings fall in category (2) since they are proceedings against the property of the sick industrial company. The submission is that the leasehold right of the

appellant-company in the premises leased out to it is property and since the eviction proceedings would result in the appellant-company being

deprived of the said property, the said proceedings would be covered by category (2). We are unable to agree. The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. The words `or the like' have to be construed with reference to the preceding words, namely, `for execution, distress' which means that the proceedings which are contemplated in this category are proceedings whereby recovery of dues is sought to be made by way of execution, distress or similar process against the property of the company. Proceedings for eviction instituted by a landlord against a tenant who happens to be a sick industrial company, cannot in our opinion, be regarded as falling in this category. We may, in this context, point out that, as indicated in the Preamble, the Act has been enacted to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, they speedy determination by a Board of experts of the preventive, ameliorative, remedial and and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. The provision regarding suspension of legal proceedings contained in Section 22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the Board or the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board or the Appellate Authority. It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a sick industrial company while the said matters were pending before the Board of the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if sub-section (1) of S.22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of

such a company must continue to suffer a loss by permitting the tenant (sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are,

therefore, of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it."

14. Now reverting to Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, , 1985, it is abundantly clear that a blanket interpretation as put up by Mr. Clerk on behalf of the applicant to the phrase "no suit for the recovery of money" cannot be given to this phrase. This phrase cannot be considered in isolation without the reference to the earlier part of the Section or the latter part of the Section. The earlier part of Section clearly indicates that (i) no proceedings for the winding up of the industrial company, or (ii) for execution distress or the like against any of the properties of the industrial company, or (iii) for the the appointment of a receiver in respect thereof, shall lie or be proceeded with further. The latter part of this phrase i.e. " no suit for the recovery of money" clearly indicates that for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company no proceeding shall lie or be proceeded with further. Therefore, the phrase "no suit for the recovery of money" employed in Sec. 22(1) must be read and interpreted not in isolation but with the aid of previous part of the Section and the latter part of the section. The totality of the section is to be considered and the Section clearly indicates that "no suit for the recovery of money" shall be instituted for winding up of the industrial company or for execution,

distress or the like against any of the properties of the industrial company or for the appointment of the receiver in respect thereof. Like wise, no suit for the recovery of money shall be instituted or proceeded with for the enforcement of any security against the industrial company or of any guarantee in respect of the loans or advance granted to the industrial company. The object of the Sick Industrial Companies (Special Provisions) Act,

1985 is to protect the assets of the company and bar is put up in Sec. 22(1) for certain proceedings taken against the assets of the company. Now, the question is whether the proceedings of recovery of arrears are proceedings against the assets of the company as so to attract the bar of Sec. 22(1). The Apex Court in above mentioned decision of Shree Chamundi Moped's case (supra) has pronounced that leasehold interest of the Company in occupation of the premises as a statutory tenant cannot be regarded as property of the company for the purpose of sub-sec.(1) of Sec.22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Now, here is the question of recovery of rent, which is a compensation for the use and occupation of the premises by the Company by virtue of Leasehold interest, which is not the property of company attracting Sec. 22(1). Therefore, in no way, this recovery of rent can be regarded as proceedings against the assets of the sick company so as to attract provisions of Sec.22(1).

15. An argument was advanced before the lower appellate court against this decision of Apex Court that

from phrase "no suit for the recovery of money" and the latter remaining part of the section is amended in 1994 and the decision in Shree Chamundy's case by the Apex Court was pronounced in 1992 and, therefore, this decision of the Apex Court will not be helpful in deciding the issue. In my view, pronouncement of the Apex Court in Shree Chamundi Mopeds Limited case must be followed. The principle which the Apex Court propounded was that the leasehold interest of company in a premises is not the property of the company so as to attract Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

16. Be it suit for eviction or suit for recovery of arrears of rent, the above mentioned principle propounded by the Apex Court is equally applicable to the recovery of arrears of rent also. Therefore, the principle propounded by the Apex Court is not at all affected by the subsequent Amendment in Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 in 1994.

17. The fact remains that sofar as the relationship of landlord and tenant is concerned, tenant occupies the property and is protected against the eviction by rent legislations, which also provides a guarantee of compensation of rent by a tenant to the landlord.

Therefore, , by its very nature, as pronounced by the Supreme Court in Shree Chamundi's case (supra), this recovery i.e. the recovery of the arrears of rent

neither would fall within the previous part i.e. the part of the Sec. 22(1) which is before the phrase as "no suit for the recovery of money" of Sec. 22(1) of the Act nor the same falls in latter part of Sec.22 (1) of the phrase "no suit for the recovery of money" and the phrase as observed earlier, "no suit for the recovery of money", could be construed with reference to its previous part of the Section and the latter part of the section. That phrase cannot be taken out of the section and can be used as a blanket weapon that no suit of any kind could be instituted or proceeded with against the sick company and the contention on behalf of the opponent that if such a meaning is given, then it will render sub-sec.(3) redundant is correct and is upheld.

18. Therefore, in view of the nature of the recovery and that recovery would not fall within the purview of Sec. 22(1) either in the previous part or in the latter part and that no blanket meaning can be given to the phrase, "no suit for recovery of money", the contentions advanced on behalf of the applicant by Mr. Clerk is not upheld. It is true that the expression "proceedings" and expression "or the like" are required to be given a very wide construction. The Supreme Court in Maharashtra Tube Ltd.'s case (supra) has observed that not only legal proceedings but the proceedings pending or to be instituted before other authority also are included within the sweep of Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. But, in this case, this question does not arise and hence this

decision is not helpful for the applicant. Decision of the Apex Court in the case of Gram Panchayat (supra) would not be helpful to the applicant because this was regarding the tax liability of the company to pay taxes to the Gram Panchayat. Recovery of the tax by the Gram Panchayat cannot be put at par with the personal obligation to pay rent. Further, it was recovery against the property of the company and therefore proceedings were stayed. In the facts and circumstances of that case, the Panchayat was a creditor and the Company was a debtor. While, in this case, the landlord is not a creditor, but the relationship of the landlord and the tenant altogether a different than the company and the creditor.

19. Even giving the widest possible meaning to the phrase, "no suit for the recovery of the money" the same would not include a recovery of the arrears of rent by a landlord against a company. The reason is quite simple that as pronounced by the Supreme Court in the above case of Shree Chamundi Mopeds Limited. What is enjoyed by the company is a leasehold right which is not a property of the company for the purpose of sub-sec. (1) of Sec. 22.

20. The trial court fell into an error in rejecting the application which was corrected by the Bench of the Appellate Court.

21. In this view of the matter, prima facie, it appears that there is no substance in this Revision Application and the same is required to be rejected and hence the same is rejected. No order as to costs. However, the interim relief granted by this court on 3.8.1999 shall be continued till 30th September, 1999 in case the applicant intends to approach the higher forum.

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